United States Tuna Foundation

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February 18, 2004

Country of Origin Labeling Program
Room 2092-S
Agricultural Marketing Service
AMS, USDA; STOP 0249
1400 Independence Avenue, SW
Washington, DC 20250-0249

RE: COUNTRY OF ORIGIN LABELING PROGRAM
DOCKET No. LS-03-04

Dear Sir or Madam:

We are writing on behalf of our canned tuna processor members (Star-Kist Seafood, Bumble Bee Seafoods and Chicken of the Sea International) who comprise over 80 percent (80%) of the U.S. canned tuna market. Our canned tuna processor members provide almost the entire private sector employment in the U.S. Territory of American Samoa and also provide needed employment to Puerto Rico and California. All of this employment could be jeopardized by the proposed mandatory Country of Origin Program (COOL) rules (68 FR 91644) that were published on October 30, 2003. The rules place a devastating economic and logistical burden on U.S. canned tuna processors and significantly widen the competitive gap between U.S. and foreign processors of canned tuna products.

Under the previous voluntary COOL program rules issued on October 11, 2002, tuna used for canning was properly deemed to be an "ingredient in a processed food item". Consequently, canned tuna was exempt from the COOL requirements. Surprisingly, under the proposed COOL rules for the mandatory program, tuna used for canning is no longer considered an ingredient in a processed food item. As a result, each U.S. canned tuna processor is now faced with the virtually impossible burden of identifying on each canned tuna product the flag State of each fishing vessel and the country of each loin processing plant that may have supplied fish for a specific can of tuna.

Clearly, tuna used for canning or pouch pack qualifies as an ingredient in a processed food. The tuna does undergo "a physical or chemical change such that it no longer retains the characteristics of the covered commodity" (FR 68 61946). When frozen, round tuna is received at a U.S. tuna processing facility (the facility may process tuna for pouch packs as well as cans) it undergoes three distinct processing steps. First, it is thawed and pre-cooked; second, all bones, skin, fins, head, tail and dark meat are removed and the remaining fish

meat is cleaned; third, the fish meat and packing media is put into a hermetically sealed container. In the case where the fish is shipped elsewhere in the United States for final packing, the cleaned fish is re-frozen and shipped – the fish is again re-thawed at its final destination, combined with packing media and put into a hermetically sealed container.

The Food and Drug Administration's Standard of Identity for canned tuna (21 CFR 161.190) recognizes that canned tuna is a processed food item. It states in pertinent part,

> ". . . the food consisting of **processed** flesh of fish of the species enumerated in paragraph (a)(2) of this section, prepared in one of the optional forms of pack specified in paragraph (a)(3) of this section, conforming to one of the color designations specified in paragraph (a)(4) of this section k, in one of the **optional packing media** specified in paragraph (a)(5) of this section and may contain one or more of the **seasonings and flavorings** specified in paragraph (a)(6) of this section. It is packed in hermetically sealed containers and so **processed** by heat".

Consumers of canned tuna "do not use the items (canned tuna) in the same manner as they would the covered commodity (fresh tuna)." (68 FR 61946). Fresh tuna is a costly, high-end food item, primarily used for sushi, sashimi and as an entrée item in many upscale restaurants. Canned tuna is an affordable, commodity priced food item, used primarily in sandwiches and salads and is not a featured entrée item in upscale restaurants.

It will be exceedingly expensive and a logistical nightmare for U.S. canned tuna processors to come into compliance with the proposed mandatory COOL rules. Unlike the U.S. canned salmon industry that processes wild fish harvested in U.S. waters by U.S. boats, the U.S. canned tuna processors purchase highly migratory species of tuna from more than a dozen tuna loin processing plants and from fishing vessels registered in more than 60 countries around the world. Once delivered to the U.S. processing site, (either by a single fishing vessel or from a refrigerated carrier vessel that may deliver fish from 5 to 10 different flag vessels), the tunas are separated according to size and species for cooking, cleaning and processing. Each processing run may contain tunas from several different flag fishing vessels and/or loin processing plants, and in some cases it may be necessary to utilize fish from more than a dozen different flag fishing vessels in order to get the quantity of sizes and species needed for efficient processing operations.

Under the proposed rule, U.S. canned tuna processors would be forced to completely change the logistics of their processing cycles and maintain a label inventory that includes every possible combination of the 60 or so flag vessels and 10 or more tuna loin processing locations that may deliver fish at any one time. We estimate the cost of the label inventory and operational dysfunction to

each U.S. canned tuna processor as being in excess of $10 million per year. Even with the additional cost, we question whether a processing system can be devised that will allow U.S. canned tuna processors to meet the impossible logistical requirements entailed in separating and processing fish by flag of harvesting vessel rather than by species, quality and size. Clearly, U.S. canned tuna processors will be placed at a serious competitive disadvantage relative to foreign canned tuna processors, who are not covered by or required to adhere to this ill-advised rule.

There does not appear to be any good reason to require U.S. canned tuna processors to identify on the label the dozen or so countries whose vessels may have harvested tuna that was packed in that specific can. As canned tuna labels are already over-crowded with pertinent serving size, nutritional value and dolphin safe messages, new labels will have to be designed in order to recapture the necessary space to come into compliance with the mandatory COOL program rules. The cost of compliance may well force U.S. canned tuna processors to look once again to the unburdened foreign canned tuna processors. These foreign processors already produce about 15 to 20 percent of the U.S. canned tuna market demand.

We understand and support those in the U.S. seafood industry that see the COOL program as an important tool in their marketing strategy. Regardless, we do not believe the program rules should be forced on a segment of the U.S. seafood industry that deals with highly migratory species of fish such as tuna. Applying the proposed COOL rules to canned tuna offers no benefit to U.S. consumers and places anticompetitive and costly burdens on U.S. canned tuna processors.

Because tuna range throughout the oceans of the world (both on the high seas and the juridical zones of coastal States), routinely advising consumers that the tuna in a canned tuna product was obtained from 5 to 10 countries has no value. In the South Pacific Ocean for example, fishing vessels from more than 20 nations harvest tuna in the same general area with much of the fish going to U.S. canned tuna processing operations in American Samoa or through one of the many tuna loin processing facilities and then to U.S. canned tuna processing operations in Puerto Rico or California. Internal research has shown that consumers of canned tuna products are interested in the price and quality of the product, not where the tuna was caught or converted to loins.

Under other U.S. laws, each canned tuna product must be labeled with a unique identifier number, which allows the canned tuna processor to determine when and where each can of tuna was produced. Unlike other products, processors of canned tuna are already able to track the product to a specific processing location and from there to the harvesting source. Therefore, including canned tuna in the COOL program provides no product safety benefit.

It does, however, place a significant portion of the U.S. seafood processing business at risk.

We respectfully request that tuna harvested exclusively for the canned and pouched tuna market be considered an ingredient in a processed food item and therefore exempt from the COOL program. The highly migratory nature of tuna is not compatible with the COOL program labeling requirements. Both the consumer and the U.S. canned tuna industry will lose if an exemption is not granted. If relief is not given, the cost of the product will increase and U.S. canned tuna processors will be put at a serious competitive disadvantage with foreign canned tuna processors that are not covered by COOL requirements.

Sincerely,

DAVID G. BURNEY